



03 AUG 2006

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In re Application of	:	
BROWNLIE et al.	:	
Application No.: 10/563,199	:	NOTIFICATION
PCT No.: PCT/GB2004/002865	:	
Int. Filing Date: 01 July 2004	:	
Priority Date: 01 July 2003	:	
Attorney Docket No.: ERP02.001APC	:	
For: VACCINE COMPOSITION FOR	:	
VACCINATING DOGS AGAINST CANINE	:	
INFECTIOUS RESPIRATORY DISEASE (CIRD)	:	

This application is before the PCT Legal Office for consideration of matters arising under 35 U.S.C. 371.

BACKGROUND

On 01 July 2004, applicant filed international application PCT/GB2004/002865, which claimed a priority date of 01 July 2003 and designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 13 January 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 03 January 2006 (01 January 2006 being a Sunday and 02 January 2006 being a Federal holiday).

On 30 December 2005, applicant filed a TRANSMITTAL LETTER (FORM PTO-1390) for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee, and a preliminary amendment. These application papers were temporarily assigned application number 10/506,306.

On 03 January 2006, applicant filed a second TRANSMITTAL LETTER (FORM PTO-1390) for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee, and a preliminary amendment. These application papers were assigned application number 10/563,319.

On 05 April 2006, in application number **10/563,319**, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that a declaration of inventors in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(h) for filing any of the search fee, the examination fee, or the oath or declaration after the date of the commencement of the national stage were required.

On 12 April 2006, applicants submitted in application number **10/563,319**, a request for refund of \$300.

DISCUSSION

As is evident from the above recited facts, applicant submitted two sets of papers to enter the national stage for the same international application. The submission of two sets of national stage papers to enter the United States is improper.

35 U.S.C. 363 states:

An international application designating the United States shall have the effect, from its international filing date under article 11 of the treaty, of a national application for patent regularly filed in the Patent and Trademark Office except as otherwise provided in 102(e) of this title. (emphasis added)

Further, 35 U.S.C. 371(b) states:

(b) Subject to subsection (f) of this section, the national stage shall commence with the expiration of the applicable time limit under article 22(1) or (2), or under article 39(1)(a) of the treaty. (emphasis added)

The language of 35 U.S.C. 363 and 371 refers to the national stage of the PCT in the singular only, and thus only one (1) national stage application in the U.S. may develop from an international application. The Transmittal Letters filed 30 December 2005 and 03 January 2006 indicate that each submission is "concerning a filing under 35 U.S.C. 371" of PCT/GB2004/002865. No conflicting instructions appear in the application papers. Accordingly, each submission should have been treated as a national stage application submitted under 35 U.S.C. 371. In that only one national stage of a PCT application is permitted, it would have been proper for all of the submissions to be placed in a single application and assigned a single application number. National stage processing has already occurred in application number 10/563,199 while no national stage processing has taken place in application number 10/563,306. Accordingly, all of the papers filed on 30 December 2005 and 03 January 2006 have been placed in application number **10/563,199**.

Applicant should use application number **10/563,199** in all future communications with the Patent and Trademark Office in regards to the U.S. national stage of international application PCT/GB2004/002865.

Fees

Although a request for refund has been made in application number 10/563,319 for the fees filed 03 January 2006, for the reasons set forth above, the fees submitted on 30 December 2005 will be refunded instead. The fees will be credited to Deposit Account 11-1410.

Preliminary Amendments

The preliminary amendment filed 03 January 2006 has been entered. The preliminary amendment filed 30 December 2005 will be placed in the application file but will not be further considered.

CONCLUSION

For the reasons set forth above, the submission filed 30 December 2005 and the submission filed 03 January 2006 have been placed in the file of application number **10/563,199**.

For the reasons set forth above, the application papers filed 03 January 2006 will be processed in application number **10/563,199** as the national stage application of PCT/GB2004/002865.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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